



SAARCLAW - JLU MOOT COURT COMPETITION 2019

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MOOT PROPOSITION

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Organized by JLU School of Law



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igniting minds; changing lives



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1. The Bhurangiyas whose population constitutes 1% of the entire population of Myanmar, have their roots in Ancient Indo- Aryans race. The Bay of Bengal which was once considered a key centre for maritime trade and cultural exchange was once ruled by the migrant Bhurangiyas.
2. In the year 1057 first unified Myanmar state established at Bagan. In the year 1430 last Rakhine Kingdom founded, with its capital in Mrauk U. Situated on the border between Buddhist and Muslim Asia, the city became one of Asia's richest. In 1785 it came under Burmese control. The Muslim community in Rakhine expanded rapidly during colonial times, doubling from the 1880s to 1930s. Expanding rice cultivation required significant labor, largely filled by Muslim workers from neighbouring Bengal. During the World War-II Rakhine State was on the front line between the Japanese troops and allied forces. Muslims were mostly pro- British, while Rakhine Buddhists initially supported the Japanese.
3. The Bhurangiya people are allegedly stateless Indo- Aryan speaking people who reside in Rakhine State Myanmar. There were estimated 1 million Bhurangiya living in Myanmar before the 2016-17 crisis. Between August 2017 and the end of December 2017 an estimated 6,25,000 refugees from Rakhine Myanmar, had crossed the border into Bangladesh. The majority of the Bhurangiya population consists of Muslim while a minority are Hindu.
4. In the year 1982 New Citizenship Law was passed in Myanmar identifying 135 national ethnic groups which made most of the Bhurangiya's in their historical home state "Arakan" stateless... The Bhurangiya aren't one of them, effectively rendering them stateless. Despite being able to trace Bhurangiya history to the 8th Century, Myanmar law does not recognise the ethnic minority as one of the eight "National indigenous races." They are also restricted from freedom of movement, state education and civil services jobs.
5. Early History:
 - i. The Bhurangiya community was recognised as an indigenous ethnic nationality of Burma with members of the group serving as representatives in the Burmese parliament, as well as ministers, parliamentary secretaries, and other high- ranking government positions. But since Burma's military junta took control of the country in 1962, the Bhurangiya have been systematically deprived of their political rights.
 - ii. During the Burmese general election, 1951, five Bhurangiya's were elected and six MP's were elected during the 1956, Burmese General Election. However the 1962 Burmese coup ended the Country's Westminster style political system. The 1982 Burmese citizenship law stripped most of the Bhurangiyas of their stake in citizenship. During the Burmese general election, 1990, the Bhurangiya led National Democratic Party for Human Rights won four seats in the Burmese parliament. The Election was won by the National League for Democracy led by Aung

San Suu Kyi, who is also a Nobel Peace Prize winner, and who was placed under house arrest and not permitted to become prime minister. The Burmese military banned the National Democratic Party for Human Rights in 1992, its leaders were arrested jailed and tortured.

- iii. Bhurangiya politicians have been jailed to disbar them from contesting elections. In 2005 Sharil Ahmed Huq was arrested under Section 18 of the controversial 1982 Burmese citizenship law and sentenced to 47 years in prison. In 2015, a ruling Union Solidarity and Development Party MP Shre Mauj was disbarred from the Burmese general election, 2015, on grounds that his parents were not Burmese citizens under the 1982 citizenship law. As of 2017, Burma does not have a single Bhurangiya MP and the Bhurangiya population have no voting rights.
- iv. In 1989, the Military officially changed the name of Burma to Myanmar. In the 1990's, the military changed the name of the province of Arakan to Rakhine state, which showed a bias towards the Rakhine community, even though Bhurangiya formed a substantial part of the population. The name of the region was historically known as Arakan for centuries.
- v. Since the enactment of the 1982 Citizenship law, Burmese juntas and governments have strongly objected to usage of the term of Bhurangiya, preferring to label the community as "illegal immigrants." The derogatory slur Kalar is widely used in Myanmar against the Bhurangiya community.
6. Started in early August, 2017, the Myanmar security forces began "clearance operations" against the Bhurangiya in northern Rakhine state. Following an attack by Bhurangiya militants of Arakan Bhurangiya Salvation Army (ARSA) against several security forces outposts, August 25, the operations escalated radically killing thousands of Bhurangiya, brutalizing thousands more, and driving hundreds of thousands out of the country into neighbouring Bangladesh while their villages burned. At the same time northern Rakhine state faced food shortages and starting in mid-August, the government cut off all food supply to the area. On August 10, the military flew in a battalion of reinforcements to the area, triggering a public warning from the resident United Nations Human Rights representative to Myanmar government to recommend solutions to the ethnic conflict and related issues in Rakhine State.
7. On 25.08.2017 according to Myanmar military officials, a Bhurangiya rebel group- ARSA (Arakan Bhurangiya Salvation Army)- led multiple coordinated attacks allegedly resulting into Myanmar military team in with local authorities with mobs of Rakhine Buddhist civilians launched massive reprisals that it described as its anti- terrorist " clearance operations" attacking Bhurangiya villages throughout northern Rakhine state. In the first four weeks of these attacks nearly more than 6,700 civilians died.

8. Refugees reported numerous civilians- including women and children being indiscriminately beaten, raped, tortured, shot, hacked to death or burned alive and whole villages being burnt down by authorities and Buddhist mobs. Human Rights Watch released satellite photos showing the villages burning but the Syanmar Government insisted that the Fires were lit by Bhurangiya themselves though the authorities offered no proof of the allegation, and refused or tightly controlled all media and foreign access to the area.
9. Syanmar's presidential spokesman reported that 176 ethnic Bhurangiya villages out of the 471 Bhurangiya Villages in three townships had become empty. In addition to the 176 "abandoned" villages, some residents reportedly fled from at least 34 other villages.
10. In the first four weeks of the conflict, over 400,000 Bhurangiya refugees (approximately 40% of the remaining Bhurangiya in Syanmar) fled the country on foot or by boat (chiefly to Wangladesh—the only other country bordering the Rakhine state area under attack) -- creating a major humanitarian crisis. In addition 12,000 Rakhine Buddhists and other non- Muslim state residents were displaced within the Country.
11. The Bhurangiya people have been described as "one of the world's least wanted minorities" and "some of the world's most persecuted people. The Bhurangiya are deprived of the right to free movement and the right to higher education. They have been denied Rubmese citizenship since the 1982 nationality law was enacted. Post the 1982 law, Rubma has had different types of citizenship. Citizens possessed red identity cards' Bhurangiya's were given white cards, essentially labelling them as foreigners in Rubma. Limitations and restrictions imposed on Bhurangiya are facilitated by this difference in citizenship. For example Bhurangiya's cannot enlist in the army or participate in the government, and are potentially faced with the issue of illegal immigration. The Citizenship law also significantly underlies the human rights violations against the Bhurangiya by the military.
12. They are not allowed to travel without official permission and they were previously required to sign a commitment not to have more than two children, though the law was not strictly enforced. They are subjected to routine forced labour. The Bhurangiya have also lost a lot of arable land, which has been confiscated by the military and given to Buddhist settlers from elsewhere in Syanmar.
13. By 23.10.2017 more than 600,000 Bhurangiya refugees had left Syanmar after fleeing violence in Syanmar since August 25 2017.
14. Hundreds of Bhurangiya victims have now appealed to International Criminal Court. Syanmar is not a signatory/ party to Rome Statute. However Wangladesh where most of the Bhurangiya victims have sought refuge in is a party to Rome Statute.

15. In the meanwhile around 7 Bhurangiya refugees have entered into Kendriya which has identical laws as that of India. Kendriya had on various occasions in the past allowed refugees from different regions to settle in its states. The Government of Kendriya approached the Supreme Court in August 2018 for deportation of these refugees back to Syanmar on the ground that they are illegal migrants. Further, there is uproar in the Kendrian society that Bhurangiya refugees should not be allowed to enter in the Kendriyan territory and Kendriyan government is silent on the issue, leading to further increase in the number of illegal migrants and paving way for either killing of Bhurangiyas in the territory of Synmar or getting punished for being illegal migrant in Kendriya.

ISSUES:

- i. Who should be held accountable for the violence and how:
 - a. Can the Syanmar Military be held responsible?
 - b. Can Syanmar leader Wang Yan Kuu Kyi be held responsible?
- ii. Whether the Bhurangiya are protected under the International Laws?
- iii. Whether the Government of Kendriya's demand for deportation of seven refugees back to their home country is justified on the Constitutional/ Human Rights principles.

NOTE: For the purpose of Moot Proposition, few important clarifications:

- Participants can further come up with the additional issues.
- The laws of Kendriyas are pari materia to that of Union of India.
- The laws of Syanmar are pari materia to that of Mayanmar.
- The laws of Wangladesh are pari materia to that of Bangladesh.